



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

May 4, 2004

Ref: 8ENF-W

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Phil Noble, Director  
Wyoming State Parks and Historic Sites  
2301 Central Avenue  
Cheyenne, Wyoming 82002

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2004-0021**

Dear Mr. Noble:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (Complaint) filed against Wyoming State Parks and Historic Sites ("WSPHS") regarding Curt Gowdy State Park Headquarters, under Section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C Section 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the Complaint that WSPHS failed to comply with an Administrative Order, Docket No. SDWA-8-99-19 issued on April 15, 1999, under Section 1414(g) of the SDWA, 42 U.S.C. Section 300g-3(g). The violations are specifically set out in the Complaint.

By law, you have the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this Complaint within 30 days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your Answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You may appear at the conference yourself and/or be represented by your counsel.

EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement



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shall be finalized by the issuance of a Final Order by the

Regional Judicial Officer, EPA Region 8. The issuance of a Consent Agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein.

A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneous with, the adjudicatory hearing.

Continued noncompliance with the requirements of the Administrative Order may result in referral of this matter to the Department of Justice.

If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: Larry Robinson, WYDEQ  
Dr. Karl Musgrave, WYDOH  
Bill Conner, Superintendent, Curt Gowdy State Park



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of 10

**REGION 8**  
**999 18<sup>TH</sup> STREET - SUITE 300**  
**DENVER, CO 80202-2466**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

**May 4, 2004**

Ref: 8ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jack Knudson, Chair  
Laramie County Commissioners  
POB 608  
Cheyenne, WY 82001

Re: Notice of Complaint and Notice of  
Opportunity for Hearing Against  
Curt Gowdy State Park Headquarters  
(WY State Parks & Historic Sites)  
Docket No. **SDWA-08-2004-0021**

Dear Mr. Knudson:

Pursuant to Section 1414(a)(2)(B) of the 1996 amendments to the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300g-3(a)(2)(B), the Environmental Protection Agency (EPA) is required to notify an appropriate locally elected official of any action taken in a State that does not have primary enforcement authority for public water systems. The State of Wyoming does not have primary enforcement authority for public water systems under the SDWA.

EPA is issuing a Complaint and Notice of Opportunity for Hearing ("Complaint") under Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3) to Wyoming State Parks and Historic Sites ("State Park") in Cheyenne, Wyoming for a proposed penalty of \$2,000.00. The State Park is in violation of Administrative Order (Docket No. SDWA-8-99-19), which requires compliance with 40 CFR §§ 141.63, 141.21, and 141.31(b). The State Park has failed to comply with the maximum contaminant level for total coliform bacteria, failed to monitor for total coliform bacteria, and failed to report National Primary Drinking Water violations to EPA after issuance of the Order.

A copy of this Complaint is enclosed for your information. The Complaint does not require any response or action by the County Commission.



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If you would like to discuss this matter further, please feel free to contact me directly at 303/312-6051. If you have questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Kathelene Brainich, Environmental Protection Specialist, who can be reached at 800/227-8917 extension 6481 or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

Sincerely,

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF	)	
	)	
Wyoming State Parks and Historic Sites	)	
Cheyenne, Wyoming	)	Docket No. <b>SDWA-08-2004-0021</b>
	)	
Respondent	)	<b>COMPLAINT AND NOTICE OF</b>
	)	<b>OPPORTUNITY FOR HEARING</b>
Proceedings under section 1414(g)	)	
of the Safe Drinking Water Act,	)	
42 U.S.C. § 300g-3(g)	)	
	)	

**COMPLAINT**

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended ("SDWA"), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty, not exceeding \$25,000, against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

Complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative

Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice") (Complainant's Attachment 1).

### **GENERAL ALLEGATIONS**

1. Wyoming State Parks and Historic Sites ("Respondent") is a State Agency (a division of the Department of State Parks and Cultural Resources) and therefore a "person" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. Respondent owns and/or operates a system, the Curt Gowdy State Park Headquarters ("System"), located in Laramie County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of Section 1401(6) of the SDWA, 42 U.S.C. § 300f(16), and a "non-community water system" within the meaning of section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the SDWA, 42 U.S.C.

§ 300f(5), and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. part 141.

5. The source of the System's water is a well that is treated by a cartridge filter and disinfection. The System serves an average of 25 persons daily through 6 service connections and is open year round, but, since May 2003 the system has served an average of 25 or more people only from April through September (based upon information from the system).
6. On April 15, 1999, EPA issued an Administrative Order (Docket No. SDWA-8-99-19) to the Respondent pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (NPDWRs). A copy of the Administrative Order is attached to this complaint and incorporated herein (Complainant's Attachment 2). The effective date of the Administrative Order was April 15, 1999.
7. The Administrative Order required the Respondent, among other things, to achieve compliance with the NPDWRs, 40 C.F.R. part 141, in accordance with the schedule set forth in the Administrative Order.

8. On June 4, 2003, EPA sent Respondent a "Violation of Administrative Order" letter citing Respondent's failure to comply with the Administrative Order, the SDWA and the NPDWRs. (Complainant's Attachment 3).

SPECIFIC ALLEGATIONS

**Count I**

**Failure to comply with the Total Coliform Bacteria  
Maximum Contaminant Level (MCL)**

9. 40 C.F.R. § 141.21(a) requires non-community public water systems to monitor their water at least once per quarter to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
10. 40 C.F.R. § 141.63(a)(2) defines the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as a prohibition against any more than one sample collected during a month from being positive for total coliform bacteria.
11. Page 7 of the Administrative Order, in paragraph II of the "Order" section, required Respondent to comply with the requirements of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring. Further, it required Respondent to comply with the MCLs as stated in 40 C.F.R. § 141.63.



12. Monitoring results submitted by Respondent for its public water system during June, July, and August 2003 exceeded the MCL for total coliform bacteria, in violation of the Administrative Order and 40 C.F.R. § 141.63.

### **Count II**

#### **Failure to Monitor for Total Coliform Bacteria**

13. 40 C.F.R. § 141.21(a) requires non-community public water systems to monitor their water at least once per quarter to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
14. Page 7 of the Administrative Order, in paragraph II of the "Order" section, required Respondent to comply with the requirements of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring.
15. Respondent failed to monitor for bacteriological quality the 1<sup>st</sup> quarters (January-March) of 2003 and 2002 and the 3<sup>rd</sup> quarter (July-September) of 2001, in violation of the Administrative Order and 40 C.F.R. § 141.21(a).

### **Count III**

#### **Failure to Collect a Set of Repeat Samples After a Positive Total Coliform Routine Sample**

16. 40 C.F.R. § 141.21(b) requires any public water system to collect a set of repeat samples within 24 hours of

being notified of a total coliform positive routine sample.

17. Page 7 of the Administrative Order, in paragraph III. 1 of the "Order" section, required Respondent to comply with all repeat sampling requirements specified in 40 C.F.R. § 141.21(b) by taking no fewer than 4 repeat samples within 24 hours of being notified of a total coliform positive routine sample.
18. Respondent failed to collect a set of repeat samples after total coliform positive routine samples in July 2003 and September 2000, in violation of the Administrative Order and 40 C.F.R. § 141.21(b).

#### **Count IV**

##### **Failure to Collect 5 Routine Total Coliform Bacteria Samples**

19. 40 C.F.R. § 141.21(b) (5) requires any public water system that collects fewer than 5 routine samples per month and has one or more total coliform positive samples to collect at least 5 routine samples during the next month the system provides water to the public.
20. Page 8 of the Administrative Order, in paragraph IV of the "Order" section, required Respondent to collect at least 5 routine total coliform bacteria samples during the month following a month in which the system had one or more total coliform positive samples.

21. Respondent failed to collect 5 routine total coliform bacteria samples in September 2003 and October 2000 after a total coliform positive sample in the previous month, in violation of the Administrative Order and 40 C.F.R. § 141.21(b) (5) .

**Count V**

**Failure to Report Noncompliance  
with NPDWRs to EPA**

22. 40 C.F.R. § 141.31(b) requires that except where a different period is specified by 40 C.F.R. part 141, public water systems shall report any failure to comply with the NPDWRs (40 C.F.R. part 141) to EPA within 48 hours.
23. Page 9 of the Administrative Order, in paragraph V. 2 of the "Order" section, required Respondent to comply with 40 C.F.R. § 141.31(b) by reporting to EPA any failure to comply with any National Primary Drinking Water Regulation (40 CFR Part 141) within 48 hours.
24. Respondent failed to report to EPA instances of noncompliance detailed in the counts set forth above, with the exception of the July 2003 total coliform MCL and the September 2003 total coliform monitoring violations, in violation of the Administrative Order and 40 C.F.R. § 141.31(b) .

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

Section 1414(g) (3) of the SDWA, 42 U.S.C. § 300g-3(g) (3), authorizes the Administrator to assess an administrative civil

penalty of up to \$25,000<sup>1</sup> for violation of an Administrative Order issued under Section 1414(g)(1) of the SDWA. The proposed penalty has been determined in accordance with Section 1414 of the SDWA, 42 U.S.C. § 300g-3. For purposes of calculating and assessing a rational and consistent penalty, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondent's degree of willfulness and/or negligence, history of noncompliance, if any, and ability to pay, as known to Complainant at this time. Based on the above factors, EPA proposes to assess an administrative civil penalty of \$2,000.00 against Respondent for violations of the Administrative Order.

#### **OPPORTUNITY TO REQUEST A HEARING**

As provided in Section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondent has the right to request a public hearing on any material fact alleged in this complaint or on the appropriateness of the proposed penalty or to assert that it is entitled to judgment as a matter of law. The remainder of this Complaint consists of instructions to the Respondent (addressed as "you").

If you wish to request a hearing, you must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, you have an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.07(c).

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<sup>1</sup>In an action for violations occurring on or after March 15, 2004, a penalty of up to \$27,500 is authorized. See 69 Fed. Reg. 7121, February 13, 2004.

If you request a hearing in your answer, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, you have the right under the SDWA to elect a hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"). To exercise this right, you must include in your answer a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Your answer and one copy must be in writing and must be sent to the EPA Regional Hearing Clerk at the address below:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

**FAILURE TO FILE AN ANSWER**

To avoid entry of a default order against you pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, you must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint. Your answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which you have any knowledge. Your answer should state (1) the circumstances or

arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which you intend to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.

#### **SETTLEMENT CONFERENCE**

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation, in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that you may have regarding this complaint, should be directed to the attorney listed below.

Dated this 29<sup>TH</sup> day of April, 2004.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant.

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**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

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**SIGNED**

Margaret J. ("Peggy") Livingston, Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-6953

IN THE MATTER OF:

WYOMING STATE PARKS AND  
HISTORIC SITES (CURT  
GOWDY STATE PARK HQ)

DOCKET NUMBER:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Attachments were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was delivered as follows:

Via certified mail to:

Phil Noble, Director  
Wyoming State Parks and Historic Sites  
2301 Central Avenue  
Cheyenne, Wyoming 82002

Date: 5-4-04

By: Tiffany Mifflin for/  
Judith McTernan

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE  
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON MAY 4, 2004.**